

## LEGISLATIVE BILL 228

Approved by the Governor May 18, 1981

Introduced by Landis, 46

AN ACT to amend sections 29-507 and 29-508, Reissue Revised Statutes of Nebraska, 1943, relating to witnesses; to change procedures providing for the appearance of certain witnesses; to provide for appeal; to provide a fee; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 29-507, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-507. When A witness against a person accused of a felony shall be ordered released from custody unless the magistrate court is--satisfied--that--any--witness against the accused will not determines in the exercise of discretion that such release will not reasonably assure that the witness will appear and testify at the trial as required. , he may, when the offense charged is a--felony,--order--him--to--recognize--with--sufficient securities.--Any person may recognize for a married woman or minor to appear as a witness, or the--magistrate--may take the recognizance of either in a--sum--not--exceeding one--hundred--dollars,--which shall be valid notwithstanding the--disability--of--coverture--or--minority. When a determination to release the witness from custody is made, the court may impose any of the following conditions of release which will reasonably assure the appearance of the witness for trial or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the witness in the custody of a designated person or organization agreeing to supervise him or her;

(2) Place restrictions on the travel, association, or place of abode of the witness during the period of such release;

(3) Require, at the option of any witness, either of the following:

(a) The execution of an appearance bond in a specified amount and the deposit with the clerk of the court in cash of a sum not to exceed ten per cent of the

amount of the bond, one hundred per cent of such deposit to be returned to the witness upon the performance of the appearance or appearances; or

(b) The execution of a bail bond with such surety or sureties as the court shall deem proper or, in lieu of such surety or sureties, at the option of such witness, a cash deposit of the sum so fixed, conditioned upon his or her appearance before the proper court as a witness, and to appear at such times thereafter as may be ordered by the proper court. If the amount of bail is deemed insufficient by the court before whom the offense is pending, such court may order an increase of such bail and the witness must provide the additional undertaking, written or cash, to secure his or her release. All recognizances shall be in writing and be continuous from term to term until final judgment of the court in the case. Each surety on such recognizance shall be required to justify under oath in a sum twice the amount of such recognizance and give the description of real estate owned by him or her of a value, above encumbrance, equal to the amount of such justification, and shall name all other cases pending in which he or she is a surety. No one shall be accepted as surety on recognizance aggregating a sum in excess of his or her equity in his or her real estate, but such recognizance shall not constitute a lien on such real estate until judgment is entered thereon against such surety; or

(4) Impose any other condition deemed reasonably necessary to assure appearances as required, including a condition requiring that the witness return to custody after specified hours.

Sec. 2. That section 29-508, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-508. If any witness so required to enter into a recognizance or accept specified conditions for release under section 29-507 refuses to comply with such order, the magistrate court shall, subject to the conditions and procedure provided in section 3 of this act, commit him or her to jail until he or she complies with such order or is otherwise discharged according to law.

Sec. 3. Before a witness is committed to jail under subdivision (4) of section 29-507 or section 29-508, he or she shall:

(1) Receive written notice of the allegations upon which the state relied for its claim of a right to require a recognizance or detention and of the time and

place of the hearing on those allegations;

(2) Have a hearing before a judge;

(3) Have the evidence in support of the state's claim disclosed to him or her at a hearing;

(4) Have an opportunity to be heard in person and to present witnesses and documentary evidence;

(5) Have, to the extent practicable, the right to confront and cross-examine witnesses;

(6) Have the right to counsel; and

(7) Be given a written statement by the decision-maker as to the evidence relied upon and the reasons for the decision made.

A decision to commit a person to jail may be appealed and shall be given priority on the appellate court's calendar.

Sec. 4. A witness committed to jail under subdivision (4) of section 29-507 or section 29-508 shall, in addition to the fee provided under section 33-139, receive an amount equal to the amount a witness receives under section 29-1908 for each day held in custody.

Sec. 5. That original sections 29-507 and 29-508, Reissue Revised Statutes of Nebraska, 1943, are repealed.